



# California Fair Political Practices Commission

May 9, 1986

Robert K. Booth, Jr.  
Los Altos City Attorney  
Wilson, Morton, Assaf & McElligott  
P.O. Box 152  
San Mateo, CA 94401

Re: Your Request for Formal  
Written Advice on Behalf of  
Los Altos Penelope Lave  
Our File No. A-86-106

Dear Mr. Booth:

You have written requesting Formal Written Advice on behalf of Los Altos City Councilmember Penelope Lave with respect to an upcoming decision on a tentative subdivision map approval request. Your recent follow-up letter has helped to clarify the situation currently facing the Los Altos City Council. Taking the various communications together, the following composite represents the material facts in this question.

## FACTS

The attached map (which is not to scale) shows the relative locations of the subject properties. Councilmember Lave has a home and 2 adjacent vacant lots at the intersection of University Avenue and what is now a large driveway serving the 54-acre adjacent property to the west, owned by the Jesuits and known as "El Retiro." "El Retiro" is immediately on the other side of a year-round creek from Ms. Lave's property and is currently operated as a retreat house and conference center, the buildings of which are outlined approximately in the middle of the map and are found in Area D thereon.

As a result of a lengthy planning study, in 1985, the City Council approved a conceptual plan for "El Retiro," which consists of some 54 acres in the City of Los Altos, which identified four specific areas (A, B, C and D) of the overall property and designated some for development purposes (A and B) and others for the continued use of the retreat house (D) and for open space or public park (C).

Robert K. Booth, Jr.  
May 9, 1986  
Page 2

In February and March, 1986, the City Council approved a subdivision of Area B into six residential homes, and the following meeting, it approved a planned unit development for Area A on the enclosed map. As a result of that approval, a developer can buy the property from the Jesuits and construct 18 condominium units on it. As a part of this zoning approval, Area C was designated a private open space. If and when the Jesuits abandon the retreat house operation, which is not presently contemplated, Area C will be transferred to the City or its designee as a public park. Area C's allowable density on the master plan was transferred to Area A during the approval process, and Area C will remain as "private open space" (i.e. undeveloped) until such time as Area D is vacated by the Jesuits. Ms. Lave did not participate in this previous activity which is now concluded at the City Council level, although private citizens have filed an action challenging various aspects of this approval. If the City should lose the case, the matter would then likely be returned to the City Council for hearing.

It should also be noted that the access to Areas A, C and D is on a driveway shown on the attached drawing from University Avenue and immediately north of Ms. Lave's empty lots. This driveway will be widened into a road if the project is built. However, the Environmental Impact Report has indicated that the effect of development on traffic will be negligible.

With respect to the entire "El Retiro" property, an application to divide the property along the lines of the A, B, C and D designations shown on the attached map is pending and will probably come before the Los Altos City Council next week.

In your follow-up letter of May 1, you have provided the following additional facts:

In answer to your questions, I advised you that all of the presently pending land use regulatory activities before the Los Altos City Council with respect to the subject property have been concluded, except for an application for a subdivision map which is expected to be taken up by the City Council on May 13. The request was approved unanimously by the Los Altos Planning Commission last month. Enclosed for your use is a copy of the conditions to the subdivision map, I have also included a longer list of some forty conditions on five pages which were earlier appended to the zoning approval obtained by the applicant.

\* \* \*

Robert K. Booth, Jr.  
May 9, 1986  
Page 3

With respect to the eight conditions imposed on the tentative map, it is not likely that the City Council will change those to any substantial degree, or at all, and the project is highly likely to be approved. In my opinion, none of the conditions appended to the tentative map have any foreseeable material financial effect on Mrs. Lave's ownership of her own home and two adjacent developable lots. If any such additional or changed condition should be proposed during the course of hearing on this matter, and assuming that Mrs. Lave is entitled to participate, I would, of course, advise her to forebear taking any action or otherwise participating on such items. Frankly, I cannot conceive that any will arise.

Finally, this will affirm that, while I have not precisely scaled the geographical distance between the various properties, the Lave's developed and undeveloped properties are immediately adjacent to Area C, which will remain as private undeveloped open space for so long as the Jesuits operate the retreat house on Area D of the entire parcel. This could be for many years to come. None of the conditions appended to the tentative subdivision map affect Area C, whatever. The creek in question is an all year stream, although during the dry months, it contains a minimum amount of water. Although I have not checked it, it is entirely possible that the property lines of the Jesuit ownership on Area C is, in fact, coterminous with the boundaries of the Lave's property, among other adjacent neighbors. In any event, they are in close proximity.

I also mentioned to you that this tentative subdivision map, while not accurately described as a technicality, is only required because of the fact that the Jesuits are conveying all of Area A to a private developer for purposes of construction of residential housing. All of Areas A, B, and C were, until recently, entirely owned by the Jesuits. Under California Subdivision Law, transfer of less than the whole of one's entire ownership to a third party for purposes of sale, lease or financing, is a subdivision under the Subdivision Map Act (see Government Code Section 66424) and thus a map must be approved before the transfer can be made. Absent development of the property by a third party, the Jesuits could have proceeded with development on the basis of the land use approval previously obtained without Mrs. Lave's participation.

#### QUESTION

The question therefore is, given that the zoning of Areas A and C, and the density allowable thereon, have been fixed, may Mrs. Lave participate in decisions on the tentative map, which could include, of course, approval, disapproval, and approval with conditions, none of which are known at the present time, in light of her ownership of her own home, and two adjacent lots immediately across the creek from the open space part of the overall property.

#### ANALYSIS

The Political Reform Act (the "Act")<sup>1/</sup> prohibits a public official from making, participating in making, or using his or her official position to influence a decision in which he or she has a financial interest. Section 87100. A financial interest in a decision exists whenever the decision will have a reasonably foreseeable financial effect, distinguishable from the effect on the public generally, on an interest in real property worth \$1,000 or more. Councilmember Lave's real property interests are presumably worth much more than \$1,000. Section 87103.

Whatever the reasonably foreseeable financial effect on her property stemming from the decision, those effects will not be widespread enough to similarly affect the real property interests of a significant segment of the general public in Los Altos. Section 87103; see also 2 Cal. Adm. Code Section 18703 and Owen Opinion, 2 FPFC Opinions 77, No. 76-005, June 2, 1976.

Consequently, the issue which must be resolved is whether the reasonably foreseeable effect of the decision on Ms. Lave's property will be material or not. The Commission has a regulation which provides guidelines as to materiality when property interests may be affected. Regulation 2 Cal. Adm. Code Section 18702 provides, in pertinent part, as follows:

- (a) The financial effect of a governmental decision on a financial interest of a public official is material if the decision will have a significant

---

<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

Robert K. Booth, Jr.  
May 9, 1986  
Page 5

effect on the business entity, real property or source of income in question.

\* \* \*

(b) In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant within the meaning of the general standard set forth in paragraph (a), consideration should be given to the following factors:

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

\* \* \*

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

\* \* \*

2 Cal. Adm. Code Section 18702(a),  
(b)(2)(B).

Thus, to be material, a decision's reasonably foreseeable effect on Councilmember Lave's real property interests must be at least \$1,000 up or down. If it is \$10,000 or more up or down, then it is considered material. If it falls between those parameters, it must be equal to or greater than 1/2% of the property's current fair market value before it will be considered material. Since we have not been provided with any information as to the value of her real property, we cannot supply you with the specific dollar amount.

The decision in question will not alter the legally permissible use of Area A. That use has already been determined by previous council actions. However, if the subdivision map is denied, the Jesuits would be unable to split the property and the developer could not build the condominium project. Even though the Jesuits could legally develop the

Robert K. Booth, Jr.  
May 9, 1986  
Page 6

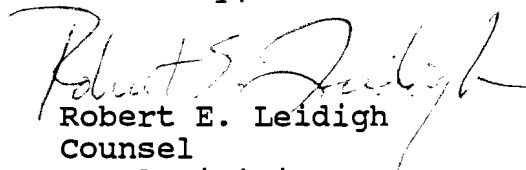
project themselves, if the facts are such that they would not do this, perhaps the Jesuits have said that they would not or could not develop or perhaps because their organization's precepts or tax status would not allow it, then the denial of the map could effectively halt the development. Consequently, it will be a question of fact whether this particular subdivision map decision will constitute a "go or no go" decision as to development of the property to the density permissible under the existing zoning. If the facts are such that the decision will actually have no practical effect on whether the property will be developed in the permitted manner, then this decision will not result in a reasonably foreseeable material financial effect (unless, as you indicated, there are conditions imposed which would have such an effect) and Councilmember Lave may participate.

However, if the subdivision map decision will affect whether or not the development will be undertaken, a different analysis will be required. Under those facts, the actual use of Area A, which is basically adjacent to her property, will be changed by this decision. The change will be significant - from open space currently, to relatively high-density housing. Under these facts, we believe disqualification will be required.

Obviously, Councilmember Lave's participation or nonparticipation will hinge on the particular factual setting of this decision. The approval of a tentative subdivision map is clearly not a ministerial action and, therefore, its actual as well as legal consequences must be considered in determining the reasonably foreseeable effects upon an official's interests in neighboring parcels of real property.

Should you have questions regarding this letter, please contact me at (916) 322-5901.

Sincerely,

  
Robert E. Leidigh  
Counsel  
Legal Division

REL:plh

WILSON MORTON ASSAF & MCELLIGOTT

F P P C

JAMES T. MORTON  
PHILIP D. ASSAF  
PEGGY L. MCELLIGOTT (1926-1982)  
THOMAS B. ADAMS  
SHERROD S. DAVIS  
GERALD A. LASTER  
JAMES L. COPELAND  
MAYER A. DANIEL  
JOAN E. BRIDY

JAMES M. PARMELEE  
ROBERT K. BOOTH, JR.  
JAMES A. HILDEBRAND

ATTORNEYS AT LAW  
630 NORTH SAN MATEO DRIVE  
P. O. BOX 152  
SAN MATEO, CALIFORNIA 94401  
(415) 342-3523

MAY 2 10 31 AM '86

ERNEST A. WILSON  
OF COUNSEL  
AUTOMATIC TELECOPIER  
GPS (415) 342-6392

PLEASE REPLY TO:

P. O. BOX 152  
SAN MATEO, CA 94401

May 1, 1986

Mr. Robert Leidigh  
Fair Political Practices Commission  
Post Office Box 807  
Sacramento, California 95804-0807

**RE: Request for Letter Opinion;  
Councilmember Penelope Lave  
City of Los Altos**

Dear Mr. Leidigh:

This will confirm our conversation of April 30, 1986, concerning a number of questions you had regarding my request for a letter opinion on behalf of my client Mrs. Lave, a member of the Los Altos City Council.

First, I wish to reaffirm that Mrs. Lave is well aware of my request for this opinion and has authorized it being made. We both look forward to an early response.

In answer to your questions, I advised you that all of the presently pending land use regulatory activities before the Los Altos City Council with respect to the subject property have been concluded, except for an application for a subdivision map which is expected to be taken up by the City Council on May 13. The request was approved unanimously by the Los Altos Planning Commission last month. Enclosed for your use is a copy of the conditions to the subdivision map imposed by the Planning Commission, and for your reference, I have also included a longer list of some forty conditions on five pages which were earlier appended to the zoning approval obtained by the applicant. Mrs. Lave did not participate in this previous activity which is now concluded at the City Council level, although private citizens have filed an action challenging various aspects of this approval. If the City should lose the case, the matter would then be likely returned to the City Council for rehearing.

With respect to the eight conditions imposed on the tentative map, it is not likely that the City Council will change those to any substantial degree, or at all, and the project is highly likely to be approved. In my opinion, none of the conditions appended to the tentative map have any foreseeable material financial affect on Mrs. Lave's ownership of her own home and two adjacent developable lots. If any such additional or changed condition should be proposed during the course of hearing of this matter, and assuming that Mrs. Lave is entitled to participate, I would, of course, advise her to forebear taking any action or otherwise participating on such items. Frankly, I cannot conceive that any will arise.

Mr. Robert Leidigh  
Fair Political Practices Commission

May 1, 1986  
Page Two

Finally, this will affirm that, while I have not precisely scaled the geographical distance between the various properties, the Lave's developed and undeveloped properties are immediately adjacent to Area C, which will remain as private undeveloped open space for so long as the Jesuits operate the retreat house on Area D of the entire parcel. This could be for many years to come. None of the conditions appended to the tentative subdivision map effect Area C, whatever. The creek in question is an all year stream, although during the dry months, it contains a minimum amount of water. Although I have not checked it, it is entirely possible that the property lines of the Jesuit ownership on Area C is, in fact, coterminous with the boundaries of the Lave's property, among other adjacent neighbors. In any event, they are in close proximity.

I also mentioned to you that this tentative subdivision map, while not accurately described as a technicality, is only required because of the fact that the Jesuits are conveying all of Area A to a private developer for purposes of construction of residential housing. All of Areas A, B, and C were, until recently, entirely owned by the Jesuits. Under California Subdivision Law, transfer of less than the whole of one's entire ownership to a third party for purposes of sale, lease or financing, is a subdivision under the Subdivision Map Act (see Government Code Section 66424) and thus a map must be approved before the transfer can be made. Absent development of the property by a third party, the Jesuits could have proceeded with development on the basis of the land use approval previously obtained without Mrs. Lave's participation.

We appreciate your prompt and careful consideration of the questions raised herein, and would be pleased to respond should you have further inquiries. If you are unable to complete the letter opinion in time for us to advise Mrs. Lave for the Council meeting of May 13, I would appreciate receipt of a phone call so that she might know where she stands when this item comes up. Thank you for your cooperation.

Very truly yours,

WILSON MORTON ASSAF & McELLIGOTT

  
Robert K. Booth, Jr.

RKB:eo



WILSON MORTON ASSAF & McELLIGOTT

JAMES T. MORTON  
PHILIP D. ASSAF  
PEGGY L. McELLIGOTT (1926-1982)  
THOMAS B. ADAMS  
SHERROD S. DAVIS  
GERALD A. LASTER  
JAMES L. COPELAND  
MAYER A. DANIEL  
JOAN E. BRIDY

JAMES M. PARMELEE  
ROBERT K. BOOTH, JR.  
JAMES A. HILDEBRAND

ATTORNEYS AT LAW  
630 NORTH SAN MATEO DRIVE  
P. O. BOX 152  
SAN MATEO, CALIFORNIA 94401  
(415) 342-3523

ERNEST A. WILSON  
OF COUNSEL

AUTOMATIC TELECOPIER  
GPS (415) 342-6392

PLEASE REPLY TO:

P. O. BOX 152  
SAN MATEO, CA 94401

April 2, 1986

John McClean  
Fair Political Practices Commission  
Conflicts Division  
428 J Street, Suite 800  
Sacramento, California 95814

**RE: Request for Letter Opinion**

Dear Mr. McClean:

Approximately one month ago, you and I discussed whether one of Los Altos' Councilmembers should disqualify herself from certain land use decisions which were pending, affecting property near her property. You suggested that we write, requesting a letter opinion, in the event that final decisions on the matter, which were then imminent, were not completed. Some actions were taken in March, 1986; however, other actions will be forthcoming, particularly an application for a subdivision map. Accordingly, we wish to renew our request for a letter opinion as to whether the Councilmember has a conflict of interest. Following is a summary of the facts.

Councilmember Lave owns a home, which I have identified in red on the attached small scale drawing, and she also owns a piece of property next door which has been, or can be, subdivided into two buildable lots. Those are also marked. Immediately on the other side of the creek from this real property is a large tract of land known as El Retiro, which is owned by the Jesuits, which operates a retreat house and conference center, the buildings of which are outlined approximately in the middle of the map and are found in Area D thereon.

As a result of a lengthy planning study, in 1985, the City Council approved a conceptual plan for this property, which consists of some 54 acres in the City of Los Altos, which identified four specific areas of the overall property and designated some for development purposes and others for the continued use of the retreat house and for open space or public park.

John McClean  
Fair Political Practices Commission

April 2, 1986  
Page Two

In February and March, 1986, the City Council approved a subdivision of Area B into six residential homes, and the following meeting, it approved a planned unit development for Area A, which I have designated in yellow on the enclosed map. As a result of that approval, a developer can buy the property from the Jesuits and construct eighteen condominium units on it. As a part of this zoning approval, Area C was designated as private open space. If and when the Jesuits abandon the retreat house operation, which is not presently contemplated, Area C will be transferred to the City or its designee as a public park. Area C's allowable density on the master plan was transferred to Area A during the approval process, and Area C will remain as "private open space" (i.e. undeveloped) until such time as Area D is vacated by the Jesuits.

With respect to the entire property, an application to divide the property along the lines of the designations shown on the attached map is pending and will probably be before the Los Altos City Council shortly, surely within 60 days. The question therefore is, given that the zoning of Areas A and C, and the density allowable thereon, have been fixed, may Mrs. Lave participate in decisions on the tentative map, which could include, of course, approval, disapproval, and approval with conditions, none of which are known at the present time, in light of her ownership of her own home, and two adjacent lots immediately across the creek from the open space part of the overall property. It should also be noted that the access to Areas A, C and D is on a road shown on the attached drawing from University Avenue and immediately north of Mrs. Lave's empty lots.

Any response on this subject would be most appreciated before May 9, 1986, in anticipation that the tentative map may be before the Los Altos City Council as early as May 13, 1986. Please feel free to contact me if you desire further information on this subject. We appreciate your advice and assistance.

Very truly yours,


WILSON MORTON ASSAF & McELLIGOTT

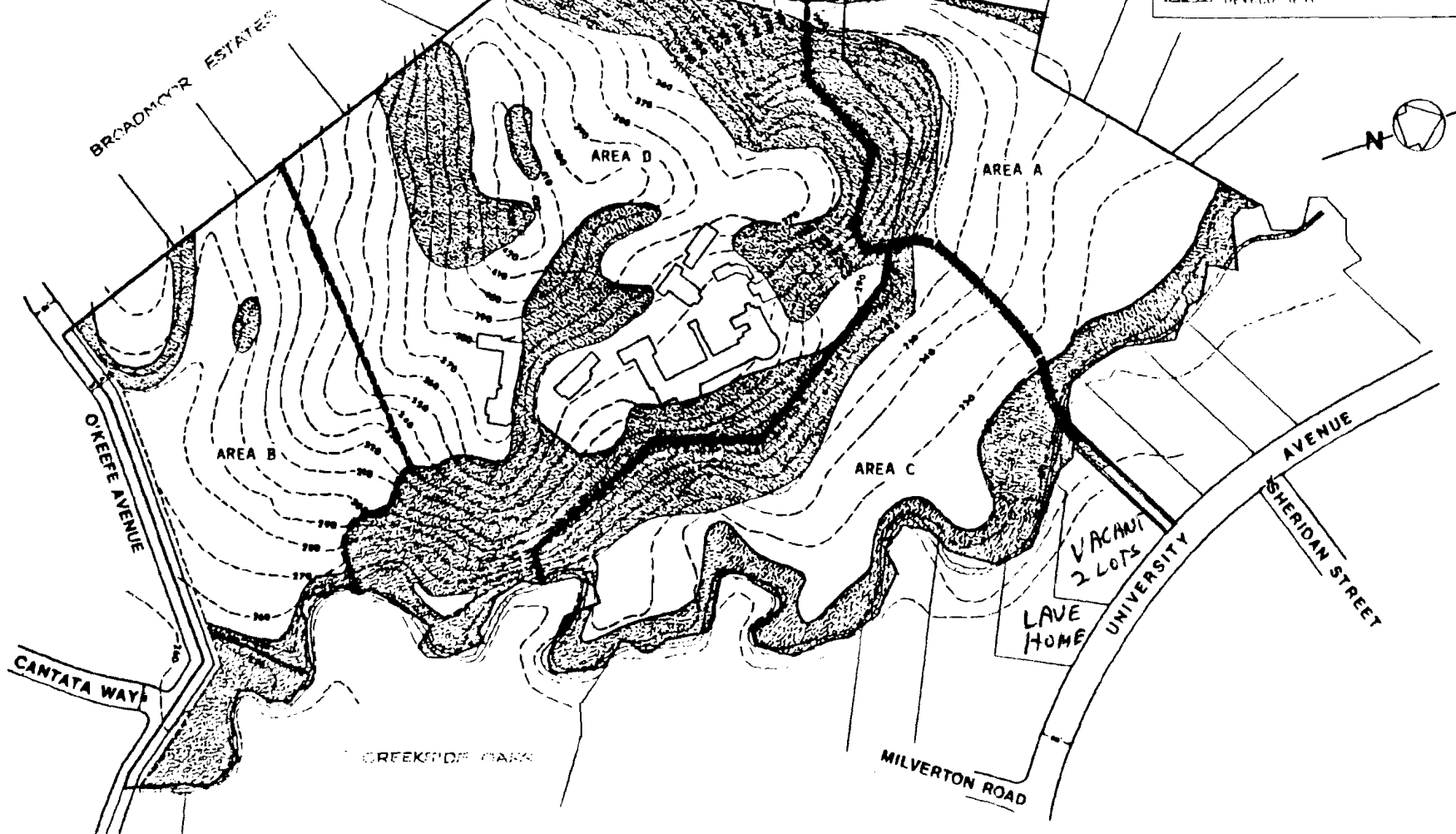


Robert K. Booth, Jr.

RKB:eo

KEY			
AREA	ACRES SUITABLE FOR DEVELOPMENT	ACRES NOT SUITABLE FOR DEVELOPMENT	TOTAL ACRES
A	5.5	2.5	8
B	8	1.5	9.5
C	5	5	10
D	14	10	24
	32.5	19	51.5

 AREAS NOT SUITABLE FOR DEVELOPMENT



NOT TO SCALE

FIGURE 2. EL RETIRO CONCEPTUAL SITE PHASING AREAS AS SPECIFIED IN THE GENERAL PLAN

EXHIBIT A

CONDITIONS OF APPROVAL

TENTATIVE MAP - WESTWIND DEVELOPMENT SUBDIVISION

1. A tree removal plan shall be submitted showing which of the existing trees are to remain. Requests for the removal of any trees on the site shall be subject to the approval of the Architectural and Site Control Committee.
2. The subdivider shall install underground irrigation systems in accordance with plans to be approved by the City Engineer.
3. The subdivider shall comply with the recommendations of the Santa Clara Valley Water District that are concurred in by the City.
4. The subdivider shall record the Final Map prior to the issuance of a building permit.
5. The subdivider shall provide an irrevocable offer of dedication to the City for a conservation easement, pursuant to Ordinance 86-147, which establishes protection and presentation requirements for Adobe Creek. Said offer of dedication shall be submitted to the Engineering Department for review and approval prior to approval of the Final Map.
6. The subdivider shall pay a fee in lieu of park land dedication in accordance with Section 10-3.49 of the Los Altos Municipal Code.
7. There shall be no pedestrian or vehicular access from that portion of Area A (outside the 80-foot conservation setback area) to either the Redwood Grove Nature Preserve or the abandoned portion of Fremont Avenue.
8. The conditions of approval for 85-DP-3 shall be met.

## CONDITIONS OF APPROVAL

85-DP-3 - WESTWIND DEVELOPMENT, EL RETIRO, AREA A

1. The applicant shall process a tentative map to accomplish the proposed subdivision. Said map shall include names for the existing access road from University Avenue and the proposed private streets.
2. Within six months of the approval of the subject development plan by the City Council, the applicant shall, in conjunction with the owners of the Jesuit Retreat House, improve the emergency road running from the primary access road to the west side of the Retreat House property. The improvements shall consist of regrading the road surface and pruning trees and shrubs. The work shall be done annually as needed. An Easement for said access road shall be recorded prior to the issuance of a building permit.
3. The recommendations contained in 1) the Soil and Foundation Investigation by Cleary Consultants, Inc. dated March 1, 1985; b) the letter dated October 21, 1985, from Cleary Consultants, Inc. regarding surface drainage control measures; c) the letter dated December 5, 1985, from the Santa Clara Valley Water District; and d) the letter dated December 12, 1985, from Earth Metrics, shall be accomplished by the applicant prior to the issuance of an occupancy permit. The final design of the bridge shall meet the requirements of the City and the Santa Clara Valley Water District. The subdivider shall reimburse the City for any costs incurred in reviewing the soil and foundation investigation.
4. The applicant/property owner shall dedicate an easement for flood control purposes along the length of Adobe Creek as required by Santa Clara Valley Water District as concurred in by the City. A conservation easement/setback with a minimum width of 80 feet from the top of the nearest bank shall overlay the outermost limits of the Santa Clara Valley Water District easement or the 100-year flood plain, whichever is greater. Prior to the issuance of a building permit and prior to any construction activities including grading, 1) an Adobe Creek Setback Ordinance must be adopted by the City Council; if the Ordinance is not adopted by May 1, 1986, a building permit may be issued; and 2) the applicant shall record a conservation easement/setback as required by said Ordinance and provide documentation of its recordation to the Planning Department. The Adobe Creek Ordinance should be reviewed by the Parks and Recreation Commission and the Planning Commission prior to consideration by the City Council. Prior to any construction activities, a temporary fence shall be installed along the project boundary adjacent to the 80-foot-wide Adobe Creek setback. Said fence shall be maintained during construction of the project. No construction activities may occur within the Adobe Creek easement/setback area; except as allowed by an Encroachment Permit issued by the Engineering Department.
5. The applicants and property owner shall allow for a future pathway within the Adobe Creek easement/setback by making an irrevocable offer of dedication for a pathway easement. The property owner shall allow for a future pathway connecting the Adobe Creek pathway to University Avenue by making an irrevocable offers of dedication for a 10-foot-wide pathway easement along the existing private road. The irrevocable

offers of dedication shall be subject to the review of the Parks and Recreation Commission and approval by City Council prior to the issuance of a building permit. The developer shall be responsible for the installation of said pathways prior to the issuance of an occupancy permit. The design of said pathways shall be subject to the review and approval of the Parks and Recreation Commission and City Council. Said approval process shall not delay the issuance of an occupancy permit. The 80-foot easement/setback area adjacent to Adobe Creek shall be replanted with native shrubs and trees to the satisfaction of the Recreation Department prior to the issuance of an occupancy permit.

5. Construction activities at the project site shall be restricted to the weekday hours of 7 a.m. and 6 p.m.
7. The applicant shall inform the public of proposed construction timelines to minimize potential annoyance related to construction noise.
8. State noise emission standards for delivery motor vehicles shall be met. Delivery trucks should not leave their engines idling while unloading or waiting to unload.
9. The following measures shall be implemented to reduce erosion and stability hazards on graded hillsides:
  - a. Cut and fill slopes shall be no steeper than 2:1 (50 percent), unless steeper slopes are determined suitable by a soils engineer and are approved by the Engineering Department.
  - b. Land should be excavated and graded during a single dry construction season, from May to October.
  - c. Stormwater shall not be allowed to flow directly down unprotected slopes.
  - d. Before the start of winter seasonal rains, all exposed soils shall be mulched and planted with vegetation.
  - e. Native vegetation shall be retained wherever possible.
  - f. Catch basins shall be used to retain sediment within the site area during the construction period.
10. Utilities shall be designed to provide sufficient flexibility to withstand the ground motion induced during an earthquake. Specifically, flexible utility connections shall be installed and automatic shutoff valves should also be utilized on all conduits.
11. Foundations on alluvium shall be anchored in stable bedrock e.g., through piling or caisson foundations, or designed with an alternative as approved by the Chief Building Inspector.
12. Foundation support shall be designed to resist the effects of ground shaking, or designed with an alternative as approved by the Chief Building Inspector.
13. Landscaping and irrigation shall be provided in accordance with a detailed plan approved by the Architectural and Site Control Committee. Mature oaks with a diameter at breast height greater than eight inches shall be preserved. Elm trees (*Ulmus* spp.) shall not be planted on the site, until such time as Dutch elm disease has been eradicated in Santa Clara County, as determined by the California Department of Forestry. Landscaping shall soften the visual impact of the buildings and grading as viewed from off the site. The applicant shall post a performance bond with the City in an amount necessary to

carry out the approved landscaping plan, and upon the installation of the approved landscaping, the applicant shall provide the City with a one-year bond guaranteeing maintenance of the landscaping to the satisfaction of the Planning Department.

14. The trees which are designated as protected on the site plan shall not be removed without prior approval of the Architectural and Site Control Committee.
15. During construction, measures shall be taken to control surface runoff into Adobe Creek. A continuous earth berm shall be constructed to the satisfaction of the Engineering Department. A small collection basin and temporary outlet pipe shall be provided at the low point of the berm to carry water to the creek.
16. Additional temporary measures to control erosion/siltation during construction may include siltation fences, hay bales, sand bags, and flexible pipelines. These measures shall be shown on an erosion control plan to be prepared by the applicant's civil engineer and approved by the Engineering Department prior to the issuance of a building permit.
17. A structural engineer shall design footings, foundations, and on-site drainage with special attention to the inherent stability problems of the site, with consideration given to appropriate placement of buildings in relation to slopes and unstable soils.
18. Subsurface testing shall be performed before issuance of a building permit to determine if possible subsurface archaeological resources exist under the more level portions of the project site. The testing shall be performed in locations selected by the archaeologist in charge. The archaeologist in charge shall consult other local archaeological experts to consider the methods and treatment of any artifacts found. A Native American representative approved by the State of California Native American Heritage Commission, local decedents where possible, shall be present during this testing. Based on any findings, site design mitigation shall then be proposed if needed, to avoid any adverse impacts, prior to the issuance of a building permit. The Native American representative shall be present at the site during any construction activities that may disturb archaeological remains.  
Any other cultural materials accidentally found during construction would be cause to stop earthmoving operations until a plan for mitigation, either preservation or salvage, has been agreed upon by the archaeologist in charge, the developer, and the City Council, in accordance with the conditions of Appendix K of the State CEQA Guidelines. If archaeological remains are discovered, the Native American representative shall be contacted to be present when and if further testing occurs to locate or evaluate the archaeological material found. Any significant artifacts found shall remain within Santa Clara County. The applicant shall pay for all fees associated with the contracts with the archaeologist and the Native American representative. In addition, the applicant shall pay for all staff time associated with the administration of said contracts.
19. The driveways shall have an all-weather surface.
20. The subdivider shall pay a fee in lieu of park land dedication in accordance with Section 10-3.49 of the Los Altos Municipal Code.

21. Exterior color chips and material samples shall be submitted to the Architectural and Site Control Committee for approval prior to the issuance of a building permit. Roofing materials shall be fire resistant with at least a U.L. labeled Class C rating.
22. Four fire hydrants shall be installed at locations selected by the Fire Department prior to the commencement of any framing.
23. The entry dates and their operation shall be approved by the City prior to the issuance of a building permit.
24. Revised plans showing an approved Fire Department turnaround at the terminus of the internal access road shall be approved by the Fire Department prior to the issuance of a building permit. The entire turnaround area shall consist of turf block.
25. In conjunction with El Retiro, the Fire Department connection and related piping shall be relocated to a location specified by the Fire Department prior to the commencement of any work on the culvert.
26. A life safety fire sprinkler system meeting the requirements of the National Fire Protection Association's Standard 13D, shall be installed in all buildings located on the property prior to the issuance of an occupancy permit.
27. The open space area located on the west side of the project shall have wild/dry grass and any other combustible material removed as directed by the Fire Department prior to the issuance of an occupancy permit. Dead mature trees and large limbs of dead mature trees located on the conservation easement and open space area on the west side of the project shall be retained, except as directed by the Fire Department. Provisions shall be incorporated in the homeowner's association's by-laws to require the annual clean-up and mowing, if needed, of this area prior to May 15 of each year.
28. A parking plan shall be developed and approved by the Fire Department showing allowed and no parking areas. Provisions shall be incorporated in the homeowners association's by-laws to maintain signing and related painted markings for the no parking areas to the satisfaction of the Fire Department prior to the issuance of a building permit.
29. The applicant shall submit notification of the proposed channel modifications to the Department of Fish and Game and execute streambed alteration agreements as required by Fish and Game Code Section 1603 prior to the issuance of a building permit.
30. The subdivider shall improve the University Avenue frontage to City standards in accordance with plans to be approved by the City Engineer.
31. The subdivider shall extend the existing sanitary sewer main from University Avenue to serve the proposed development and the existing retreat house facilities.
32. The sanitary sewer system that will serve the proposed development shall be a private system, and a Homeowners Association shall be responsible for its operation and maintenance. Due to the need for the joint usage of the subject private sewer system, the developer shall enter into an agreement with the Jesuits regarding maintenance and operation.
33. The subdivider shall pay a sewer capacity rights charge in accordance with Resolution No. 84-52.
34. The subdivider shall pay a storm drainage fee of \$0.064 per square foot on the net area remaining after easement dedications for flood control and conservation purposes.



35. The proposed street shall be privately owned, and a Homeowners Association shall be responsible for its maintenance and repair. Due to the need for the joint usage of the main access road the developer shall enter into an agreement with the Jesuits regarding maintenance and repair.
36. The subdivider shall contact California Water Service Company regarding the extension of water service to the site.
37. The subdivider shall submit detailed grading and drainage plans including erosion control, for approval by the City Engineer. The drainage plan shall provide for two outfalls to Adobe Creek and shall include the placement of gabion and vegetation for velocity dissipation and aesthetic improvement.
38. All work within the public right of way shall be done in accordance with plans to be approved by the City Engineer.
39. The subdivider shall coordinate the installation of underground cable television facilities with United Cable Television Inc.
40. Prior to the issuance of a building permit, a document shall be approved by the City Attorney and recorded to insure that Area C of the El Retiro Master Plan is designated as permanent open space, to remain private until the property owner decides to dedicate Area C as public open space in exchange for a density bonus.

WILSON MORTON ASSAF & McCELLIGOTT

ATTORNEYS AT LAW

830 NORTH SAN MATEO DRIVE

P. O. BOX 152

SAN MATEO, CALIFORNIA 94401

(415) 342-3523

JAMES T. MORTON  
PHILIP D. ASSAF  
PEGGY L. McCELLIGOTT (1926-1982)  
THOMAS B. ADAMS  
SHERROD S. DAVIS  
GERALD A. LASTER  
JAMES L. COPELAND  
MAYER A. DANIEL  
JOAN E. BRIDY  
JAMES M. PARMELES  
ROBERT K. BOOTH, JR.  
JAMES A. HILDEBRAND

ERNEST A. WILSON  
OF COUNSEL

AUTOMATIC TELECOPIER  
GPS (415) 342-6392

PLEASE REPLY TO:

P. O. BOX 152  
SAN MATEO, CA 94401

F P P C

MAY 6 8 16 AM '86

May 2, 1986

Mr. Robert Leidigh  
Fair Political Practices Commission  
P. O. Box 807  
Sacramento, CA 95804-0807

RE: Request for Letter Ruling; Councilmember Penelope Lave  
ENCLOSED: Enclosures that were inadvertently left out of our  
letter to you of May 1, 1986:

CONDITIONS OF APPROVAL

    / FOR YOUR INFORMATION  
    / FOR YOUR FILES  
  X  / IN ACCORDANCE WITH YOUR REQUEST  
    / PLEASE COMMENT  
    / PLEASE SIGN AND DATE WHERE INDICATED AND RETURN  
    / FOR YOUR ACTION  
    / FOR YOUR CALENDAR ENTRY  
    / PLEASE FILE AND RETURN ENDORSED/CONFORMED COPIES  
    / SELF-ADDRESSED, STAMPED ENVELOPE ENCLOSED  
    / OTHER: \_\_\_\_\_

Thank you for your cooperation.

Very truly yours,

*Robert K Booth, Jr.*  
Robert K. Booth, Jr. (ED)

RKB:eo  
Enclosures



# California Fair Political Practices Commission

May 2, 1986

Robert K. Booth, Jr.  
Los Altos City Attorney  
Wilson, Morton, Assaf & McElligott  
P.O. Box 152  
San Mateo, CA 94401

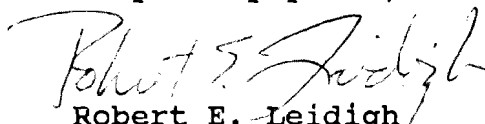
Re: 86-106

Dear Mr. Booth:

Your letter requesting advice under the Political Reform Act has been received on May 2, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

  
Robert E. Leidigh  
Counsel  
Legal Division

REL:plh  
cc: Penelope Lave



# California Fair Political Practices Commission

April 30, 1986

Robert K. Booth, Jr.  
Los Altos City Attorney  
Wilson, Morton, Assaf & McElligott  
P.O. Box 152  
San Mateo, CA 94401

Re: Your Request for Advice on  
Behalf of Los Altos  
Councilmember Lave  
Our File No. A-86-106

Dear Mr. Booth:

I have tried for several days to reach you repeatedly by telephone to ascertain necessary additional facts, but we have been unable to connect. I need to know Councilmember Lave's mailing address. In addition, what is the distance between her home and Areas A and C? What is the distance between the vacant lot and those two areas? Since Area A may be developed with up to 15 condominium units, what will be the traffic implications for the road unnamed) immediately to the north of Ms. Lave's properties? What are the traffic implications for University Avenue? From the enclosed map, it is difficult to determine any of this because it is not to scale in several respects. What is the approximate value of the two Lave properties?

Until I receive this information, I cannot proceed to render the advice which you have requested. Please respond as soon as practicable.

Sincerely,

A handwritten signature in cursive script, which appears to read "Robert E. Leidigh".

Robert E. Leidigh  
Counsel  
Legal Division

REL:plh